

DOCUMENT RESUME

08160 - [C3528630]

[Protest against Decision Not To Set Aside Contract for Small Businesses]. B-193203. December 15, 1978. 2 pp.

Decision re: Cosmos Engineers, Inc.; by Robert F. Keller, Deputy Comptroller General.

**Contact: Office of the General Counsel; Procurement Law I.
Organization Concerned: Department of the Air Force; Small
Business Administration.**

**Authority: Defense Acquisition Regulation 1-705.4. Defense
Acquisition Regulation 1-706.5.**

A company protested the contracting officer's determination not to set aside a procurement for small business concerns. The contracting officer's determination that a reasonable number of offers would not be obtained for a small business set aside was proper and need not be referred to the Small Business Administration. (RRS)

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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: R-193203

DATE: December 15, 1978

MATTER OF: Cosmos Engineers, Inc.

DIGEST:

Contracting officer's decision not to set aside procurement for small business on basis that there is not reasonable expectation that offers will be obtained from sufficient number of responsible small business concerns is not required to be referred to SBA under COC procedures.

Request for proposals (RFP) No. FO4606-78-R-0468 was issued on May 1, 1978, by the Department of the Air Force for the procurement of services related to the engineering, furnishing, installing and testing of a high-frequency, single-side band worldwide communications system. Cosmos Engineers, Inc. (Cosmos), protested the contracting officer's determination not to set aside the procurement for the exclusive participation of small business concerns. The determination was on the basis that there is not a reasonable expectation that offers will be obtained from a sufficient number of responsible small business concerns. Cosmos protested the fact that the contracting officer, in reaching a determination as to whether to set aside the procurement totally for small business concerns, did not consider Cosmos to be "a responsible concern for this procurement" and argues that only the Small Business Administration (SBA) has statutory authority to certify the competency of a small business as to all elements of responsibility. Cosmos has stated that the protest is based on the narrow issue of whether the contracting officer had to refer the matter of Cosmos' responsibility to SBA under Defense Acquisition Regulation (DAR) § 1-705.4 (1976 ed.).

The cited DAR section applies to situations where the contracting officer proposes to reject "a bid or proposal" of a small business because the concern is nonresponsible. It states that "Under no circumstances will a referral be made to the SBA prior to a determination by the contracting officer that the offer of the small business concern is responsive." Thus, it is clear that the section applies to a situation where a small business concern has submitted an offer which the contracting officer proposes to reject because of the offeror's lack of responsibility. There is no requirement in that section that a contracting officer's decision not to set aside a procurement under DAR § 1-706.5 (a)(1) (1976 ed.) be referred to the SBA under its COC procedures.

Accordingly, the protest is denied.

R. G. K. 11/12
Deputy Comptroller General
of the United States.